IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.353 OF 2005

M/s.S.B.Building Corporation
and other Petitioners

versus

State of Maharashtra & another Respondents

Mr.Janak Dwarkadas, Sr.Counsel i/by Ranjit & Co; for petitioners.

Mr.R.M.Sawant, GP for respondents 1 to 4.

Ms.A.K.Sawla for respondent no.5.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 18th March 2005

PC :

1. Heard Mr.Dwarkadas in support of this petition, Ms.Savla for respondent no.5 and Mr.Sawant - Government Pleader for respondents 1 to 4.

2. The land owned by the petitioners is reserved for development for public purpose namely construction of Children Park. Since sufficient time has gone and necessary steps for acquisition were not taken, a notice was served by the

petitioners dated 15th March 2002 on the respondents that the property concerned be acquired failing which the reservation would stand lapsed and released therefrom. It is stated that the notice was received by the Municipal Corporation on 19th March 2002. Steps were expected to be taken within six months. Since they were not taken, the fiction under section 127 of the Maharashtra Regional and Town Planning Act (MRTP Act) would apply namely that the reservation lapses. On behalf of respondents it is pointed out that the notice was received by them on 19th March 2002. On 13th September 2002 a communication was addressed by the Chief Engineer (Development Plan) of the Municipal Corporation to the Secretary, Urban Development recording therein that as per Improvement Committee's Resolution dated 9th September 2002 sanction be given to initiate acquisition proceedings. It is stated on behalf of respondents that this is a necessary step as contemplated under section 127 of the MRTP Act under which the said notice was given by the petitioners. Subsequently a sanction was accorded by the Municipal Corporation on 16th September 2002 and a further communication addressed by the Chief Engineer dated 17th

September 2002. It is submitted on behalf of petitioners that these subsequent actions could not be said to be necessary steps within the period of six months.

3. We have considered submissions made by Mr.Dwarkadas for the petitioners. All that Section 127 of MRTP Act requires is that if land is not acquired or no steps as stated under the section are commenced, then the reservation will lapse. In the instant case the Chief Engineer (Development Plan) had sent the proposal to the State Government in pursuance to the Resolution of Improvement Committee to initiate acquisition. The resolution of the Improvement Committee passed on 9th September 2002 and the letter of Chief Engineer dated 13th September 2002 would certainly constitute such necessary steps and they are taken within six months from the receipt of notice. That being the position, the first submission of Mr.Dwarkadas cannot be accepted.

4. The second submission of Mr.Dwarkadas is that since a period of two years has lapsed from the date of making of declaration of the intention to acquire the land, the entire acquisition proceedings for acquisition of the land shall be

deemed to have been lapsed under section 11A of the Land Acquisition Act, 1894. As far as this submission is concerned it has been squarely repelled by Apex Court in its judgement in the case of State of Maharashtra and another Vs. Sant Joginder Singh Kishan Singh and others reported in AIR-1995-SC-2181 by observing that Section 11A of the Central Act is not applicable to the actions for acquisition initiated under MRTP Act. This being the position, there is no substance in the second submission also. Petition is, therefore, rejected.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)